

Taylor Branch

THE CENSORS OF BUMBLEDOM

In which the CIA bypasses the First Amendment in order to hide a bugged house cat

ARNOLD TOYNBEE, renowned as a spokesman for intelligent decency in the world, has written that the American CIA has surpassed Soviet Communism as the most powerful sinister force on earth. "Wherever there is trouble, violence, suffering, tragedy," he says, "the rest of us are now quick to suspect the CIA had a hand in it." This view has been widely accepted in the United States, but it had no political weight until the Watergate scandal introduced the manipulative techniques of the CIA into American politics. Many commentators have expressed the opinion that the Watergate intrigues have raised the possibility of the CIA's undercover, totalitarian methods coming home to our shores to destroy our democratic traditions. We were given a reprieve, they say, because the amateurs of CREEP had not yet learned the deft skills by which the CIA arranges the destiny of a foreign country.

The most recent evidence suggests that all this is nonsense. Victor Marchetti, who spent fourteen years as a CIA executive before resigning in 1969, describes Watergate as fairly typical of an Agency operation, exposed when the fates caused a security guard to stumble over foul-ups normal to a covert mission. The officials in charge of CREEP apparently shared the illusions that lie at the heart of the Agency—that the politics of a country can be guided by tapping the phone of a Larry O'Brien or a Spencer Oliver, or by employing someone like Donald Segretti to write fake letters and hire women to run nude in front of Muskie headquarters. One of truth is that the Gemstone information was "essentially useless." The stupidity of the mis-

sion—from the practical, amoral viewpoint of the clandestine operative—is vintage Agency material.

Like Watergate, the CIA is dangerous not because of its diamond-hard efficiency but because of the principles it violates. The Agency is good at bribes—it pumped \$20 million into the 1964 elections in Chile—and it can supervise mercenary armies in backward countries like Laos. These things are terrible enough, but none too subtle or difficult, and Marchetti believes that the everyday operations of the Agency give the lie to the myth of its deadly professionalism. The CIA does not leave dark messages written in blood. During his entire career, Marchetti says that he never came across a single "termination mission" by or against a career CIA agent. An agent is not a daredevil but a handler of knaves—he is E. Howard Hunt directing the freedom-loving Cubans from across the street. The CIA's chief weapons are not the martini-olive bug or the cyanide dart gun; instead, agents spend most of their time with memos, and on a real action mission they are most likely to be equipped with nothing more than bribe money.

The CIA's fearsome reputation is its best protection against the meddlesome notions of outsiders. No one dares move against Leviathan. There has never been any serious move in the media to curb the Agency, and the Congress has been so cowed by the covert operatives that it has been too scared even to set up a committee on the CIA. The old codgers on the informal "back channel" have confessed not to want to know anything that might compromise the national security.

book myths and expose its operatives as bureaucrats with delusions, dangerous in spite of themselves, living off an undeserved reputation for derring-do. Only if the Agency were made human, he believed, could anything ever be done about Arnold Toynbee's nightmare.

Apparently this idea struck a sensitive spot somewhere in the CIA, for the Agency stole a copy of Marchetti's book outline from a New York publishing house. The agents retired to CIA headquarters in Langley, Virginia, and scoured the law for a way to keep the book from seeing the light of day. They found one. In April 1972, the U.S. government sought and obtained a permanent court order enjoining "Victor Marchetti, his agents, servants, employees and attorneys, and all other persons in active concert or participation with him" from disclosing any information, "factual, fictional or otherwise," without the prior consent of the CIA. The order was upheld by the U.S. Court of Appeals, and the Supreme Court declined to review the case. If Marchetti now speaks out from his classified mind, he faces instant imprisonment for contempt of court—no juries, not even a show trial.

Marchetti, outspooked and outlawed round one, vowed to go on. After signing a contract with Alfred A. Knopf for a critical, non-fiction book on the CIA, he took on a coauthor—John Marks, a thirty-year-old ex-Foreign Service officer—and drafted a 500-page manuscript. It was dutifully handed over to the Agency in August 1973, and the authors tried reasoning together with the CIA censors, hoping to avoid the Ellsberg dilemma of keeping quiet or risking jail. But the book came back from the scissors shop riddled with 339 national security deletions, excising more than a fifth of the text.

As a new legal challenge to the censorship begins, all the parties to the case have pulled out their Sunday rhetoric. For the ACLU lawyers who represent the authors, it is the first legally sustained exercise of prior restraint on national security grounds in the history of the United States, a pernicious (but almost unnoticed) reversal of the decision in the *New York Times* case on the Pentagon Papers. For the CIA, the principle at hand is nothing less than the government's right to conduct its business without internal subversion. If people like Marchetti are allowed to blab incontinently about matters of state, the government's executive arm will be paralyzed and Washington will degenerate into a giant ADA meeting.

The Justice Department, representing the Agency, sees the sanctity of contracts as the real issue. Marchetti—like Ellsberg, Marks, and anyone else dealing with the CIA—has not got his job only after signing a contractual

contract that such a contract overrides Marchetti's First Amendment rights. This is a new twist in the effort to protect official secrets, overlooked in the Ellsberg case. The Justice Department briefs are loaded with the lore of corporate trade secrets—citing precedents like *Colgate-Palmolive Co. v. Carter Products*—as if Marchetti had threatened to let loose the magic ingredient in Coca-Cola. Lying behind all the questions of CIA spying and security, this rather unorthodox contractual approach to secrecy carries with it a potential for widespread application against dissenting government employees.

Less intelligence than ever

OVER ITS TWENTY-SIX-YEAR history, partly by design and partly by failure, the CIA has come to specialize in foreign manipulations rather than intelligence. Classical espionage against the Russians and the Chinese has produced one of the driest wells in spy history. According to Marchetti, the CIA has been unable to penetrate the governments of the major Cold War opponents. The warring spy camps have had to content themselves by striking public-relations blows against one another. When Kim Philby defected to the Russians in 1963, after twenty years as a double agent in Britain, the KGB held elaborate press conferences and rushed his memoirs into print to thrill the world with Soviet spy power. The CIA said his book was phony—double agents do not keep journals of their perfidy—and most experts agree that Philby's activities did not hurt the British or help the Russians very much. Still, the CIA smarted under the publicity barrage, and it soon trotted out one Col. Oleg Penkovsky, claiming that he had been just as valuable as Philby. Former CIA director Richard Helms has said proudly that Penkovsky had helped the U.S. detect Russian missiles in Cuba in 1962. Soon, Penkovsky's carefully recorded memoirs were on the best-seller lists, and it didn't matter that many experts doubted their authenticity, suspecting that the colonel had gotten more than a little editorial assistance at Langley. Marchetti's revelations on this matter are clipped from the book, but he has written elsewhere that Penkovsky was a British agent who provided no information whatever on the installation of the missiles in Cuba—the Agency detected them from aerial photographs. Penkovsky was preoccupied with other matters, such as insisting that he wear the full colonel's uniform of whichever Western intelligence outfit was debriefing him.

Other than the Cuban missile crisis, the CIA (if we had only-known syndrome) has not anticipated a

continued

single one of the many outbreaks of war and armed confrontation in the past twenty-five years. Now the CIA has become marginal to even the detection of future missile crises, for it has given the Pentagon control of the satellites that provide the crucial security information on weapon and troop movements. What special intelligence there is in the world seems largely boring and of little consequence. In 1964 the Agency learned that the American Embassy in Moscow had been bugged from top to bottom since 1952. For twelve years at the height of the Cold War, the KGB had access to every secret message within the embassy and to the cable exchanges with Washington—with little evident advantage. The great powers are too big and cumbersome to move with much subtlety.

While the intelligence value of the CIA has been whittled down continuously—until Henry Kissinger now scorns the calculations and position papers of the analysts—the Clandestine Services branch of the Agency (modestly known as the Plans Division) has mushroomed in size and importance. Marchetti and Marks assert that fully two-thirds of the CIA's money and manpower are devoted to covert activities in the form of dirty tricks and paramilitary operations. This fact, along with the organization charts and the budget figures that support it, was originally censored from the book; but the CIA relented when Marchetti and his lawyers pointed out that Sen. William Proxmire had already ferreted out the information and put it in the *Congressional Record*.

THE MARCHETTI-MARKS MANUSCRIPT shows that the CIA has trimmed away its intelligence functions so completely that it can now justify its existence only on the basis of the clandestine jujitsu it tries to practice on foreign governments—the bribes, the coups, the surgical removal of unfriendly political strains abroad. Such a specialty is just fine with the covert types who run the Agency, but they know that it is precisely these covert operations that have made the CIA vulnerable to public criticism as the symbol of sinister and undemocratic preoccupations within the American government. Harry Truman, whose administration created the CIA in 1947, stated repeatedly that the Agency was intended to be the centralized intelligence branch of government, not a squad of secret D-Day operatives. Recently a whole chorus of foreign-policy heavies like Nicholas deB. Katzenbach have picked up Truman's theme and argued that the Agency should be confined to its statutory duty "to correlate and evaluate intelligence relating to the national security." They point out that the legal basis for all the James Bond stuff is extremely tenuous.

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and provide more grist for the Katzenbach position, which is anathema at Langley. Telling the CIA to stick with information gathering is like telling the vigilantes of the Klan to put away their hoods and nooses in favor of due process of law.

To survive and prosper, the CIA must convince the public that it is employing all its professional wizardry to sniff out future Pearl Harbors. And it must keep the President thinking that in political emergencies, when men of action must discard the niceties of constitutional theory; the CIA will respond with piano-wire efficiency. Now come Marchetti and Marks to say that the Agency is out of the Pearl Harbor business, having abandoned it to the diplomats and the satellite people at the Pentagon. Moreover, they say, the CIA's covert missions are short on piano wire and long on giddy P. T. Barnum schemes fit for a Donald Segretti. The CIA would much rather be subjected to a dozen books by the usual liberal critics—attributing every suspicious automobile accident, Bolivian coup, and Republican election to the deadly genius of its agents—than suffer from one inside book like Marchetti's, which exposes a clandestine circus behind the awe-inspiring curtain of secrecy.

Cats, rabbits, and snake oil

THE MATERIALS FOR RIDICULE have long been available, but writers have been so seduced by Agency folklore that they have glided over the absurd to focus on the imaginary agent with the garrote in the wings. In *The Invisible Government*, David Wise and Thomas Ross describe the Agency's incredible clandestine feat of setting up a CIA radio station, under elaborate cover, to encourage and direct the popular uprising that was to follow the Bay of Pigs operation. The agents set up shop on Great Swan Island, a tiny spot in the Caribbean made entirely of guano and infested with three-foot lizards. While the front men vainly sought to protect the unlikely cover story that the new station on the deserted guano island was an independent venture on the part of profit-minded entrepreneurs—changing around the phony corporate charter, fending off small landing parties of Honduran students who came to denounce the CIA presence and to claim the island as Honduran soil—the intrepid CIA technicians went on the air to drum up the spirit of Cuban revolt. Three days after the invasion had failed, Radio Swan was still issuing orders to nonexistent troops. Even a year after the invasion, the station—renamed "Radio Americas" under the new leadership of the Vanguard Service Corporation—had not given up. It exhorted free-

dom-loving Cubans to tie up communications by taking receivers off hooks in phone booths, and to subvert the Cuban economy by breaking enough bottles to create a beer shortage.

The Marchetti-Marks manuscript is full of anecdotes fit for the Marx brothers or Maxwell Smart—secret projects to float balloons over Communist countries, dropping forged leaflets that promote the democratic alternative; fake letters to sow confusion within the French student movement; agents scrambling for enough Benny Goodman records to satisfy the longings of an informant. Marchetti says that the most ludicrous incidents have been censored to protect the security of the twilight-zone devices invented in the CIA lab. "I'll give you one example that they took out," he said, "because I can't imagine that the Agency could stand the publicity of putting me in jail for revealing it. We spent hundreds of thousands of dollars and several years to develop a bugging device that could be surgically implanted inside the body of an ordinary house pet. The idea was finally scuttled when someone realized that we couldn't control the animal's movements to put it within range of sensitive conversations, even if we could somehow place a wired cat or dog in the household of a target person. Many of the Agency projects are like that—pitifully silly."

THE SECRET MYTHS SWIRLING around the Agency have enabled it to go a long way on the intricate logic of Rube Goldberg. At the height of the Cold War, the Agency faced the problem of containing Communism everywhere. To do so, reasoned the head spooks, it would be helpful if the American people believed that the menace was making headway, since this would stir public support for anti-Communist measures. To stimulate that belief, it would be helpful if the government could point to tangible evidence that the Communist party was making gains right here at home. That might be accomplished if the CIA could show that many demented citizens were reading the official newspaper of the American Communist party, which in turn could be done if the CIA subsidized *The Daily Worker* to keep it alive. By this reasoning, CIA operatives were put to work concocting several thousand phony names and addresses for new, nonexistent "subscribers" to *The Daily Worker*. The CIA sent the taxpayers' money to the apostles of Moscow so that the Cold War agencies of government could point to the bulging circulation of *The Daily Worker* to support their demands for bigger anti-Communist national-security budgets.

The same aura of secrecy that makes outsiders fear the Agency like death has a powerful influence on the operatives inside the CIA. Mar-

is that secrecy creates a whole culture, and that the trappings of clandestine work infuse the most mundane undertaking with the significance of a spy thriller. It grips the brain. An agent who makes his calls from a phone booth, decked out in a disguise and a code name, can't help feeling the buzz of importance—even if he is calling to check on his subscription to *The Daily Worker*. It is a private glow similar to that experienced by liberal Democrats who take precautions against the possibility that their phones might be tapped. Paranoia is the twin brother of the clandestine mentality.

The CIA is a pioneer in the organized use of secrecy, and in this role it reflects a general condition of American culture. Government secrecy is a measure of status and prestige for its officials, and its symbols—the security clearance, the locked briefcase, the top secret-sensitive discussions, the magic references to the national security—are highly coveted. They are signs of high authority, like the Freudian terminology of the psychiatrist and the computer-laden tomes of the urbanologist. These signs can be the mark of genuine and vitally needed skills—if the Agency's secrets protect the explosive techniques of master operatives, if the multivariable systems analysis of the urbanologist is required for genuine insights into the plight of the cities—but they can also be the smokescreen for professional shamanism. Secrecy provides not only a badge of importance but a meal ticket. We pay for what we do not understand, because we hunger for an expert.

Anyone who has lost the faith like Marchetti and Marks poses an enormous threat to those who traffic in mysteries and hidden talents—like a renegade magician who shows the public where his colleagues get their rabbits. The authors have already driven the CIA farther out into the open than the Agency finds comfortable for in seeking to censor the book the CIA is reduced to naked trust—this material must be kept within the confines of the government, they say, for reasons so secret we cannot reveal them. It is reminiscent of the old Hubert Humphrey, telling the voters that they would support the President if they only knew what he knew about Vietnam, which, unfortunately, was classified. In a pinch, secrecy becomes a mask, completing the circle of its uses. The snake oil merchant's greatest secret was not the ingredients of his potions—anything would do—but the gullibility of the people in his audience and their need to believe that the good doctor could sweep away their real and imagined ills.

Top secrets everyone knows

than the others—largely because of Marchetti's high position at the CIA. Although much of the material in the Marchetti-Marks book is available in newspapers and in the CIA books, the Agency censored it anyway, on the ground that Marchetti's former status would authenticate what is now only rumor. The authors estimate that about a quarter of the stricken facts are already on the public record.

There is a reference in the manuscript, right after several pages that have been decimated by CIA censors, to "the CIA's ties with foreign political leaders." The obvious inference to be drawn is that the authors had identified foreign leaders with past or present CIA connections, and several sources have identified this kind of material as the most explosive in the book—the Agency's best case for secrecy by prior restraint.

While it is impossible to evaluate this claim without knowing precisely what has been cut, one can make an educated guess after scanning the public literature on the CIA and talking with reporters, ex-agents, and others who specialize in intelligence. I have done so, and it appears likely that the Agency is close to political leaders in Jordan, Greece, Iran, Ethiopia, Taiwan, and West Germany. In general, the Agency probably has political ties wherever it has operated in the past—Laos, Vietnam, Bolivia, Guatemala—and also in the smaller countries of Latin America and Africa, where a little bribe money can be effective enough for the spooks to throw their weight around. All this seems hardly surprising or fraught with peril for the national security. And, as Marchetti tells it, Agency ties to a foreign government do not necessarily mean that we run the country. They come closer to meaning that one of our agents gets to have lunch with a foreign official occasionally, much the way an American mogul gets to bend the ear of a Senator from time to time after making a political contribution.

BUT FAIRNESS DEMANDS that we suppress boredom and consider the Agency's view. After all, the entire national-security apparatus of the United States, the Justice Department, the ACLU, a major publishing house, and the federal courts are all burning up legal pads trying to hash out whether this material should be forbidden in the name of military security. Should Victor Marchetti, by virtue of having sat in the highest councils of spy headquarters, be allowed to declare authoritatively that foreign leaders are, or have been, tainted by American intelligence? What if the minister loses his job as a result, and the CIA is cut off from its leverage and information? Approved For Release 2002/05/06 : CIA-RDP75B00380R000600010001-8 would say that the cooperative ministers of the future will refuse to associate with the CIA for

Marchetti replies that the book does not reveal the names of classical spies, citizens of "unfriendly" countries who slip their military secrets to a CIA agent. He says that the book will cause embarrassment, but that no exposed contacts will be rubbed out by the Soviet KGB or anyone else, and no wars will break out. The case of Amintore Fanfani supports his point. In May 1973, Seymour Hersh wrote a story in the *New York Times* about Graham Martin, now Ambassador to South Vietnam, and his efforts to get the CIA to support Fanfani's wing of the Christian Democrat party in Italy. This occurred in 1970, when Martin was Ambassador to Italy, and Fanfani, a former Italian premier, was trying to take over the government again during one of Italy's periodic crises. Fanfani, a conservative, figured that \$1 million from the CIA would go a long way toward keeping the left-wingers out of power, and he made his pitch to Martin in secret meetings.

There is a hole in the Marchetti-Marks manuscript where I assume the details of this story once were. The Agency censored it, because it reveals Fanfani's ties to the CIA; but the censors had to leave in the reference to the Hersh story, which is quite thorough. The revelations in the *Times* caused some minor repercussions in Italy but didn't make any noise in the dark passageways of international espionage. If the censored anecdotes of foreigners' ties to the CIA are as tame as this one, the government would have a tough time demonstrating a grave threat to the national security. Actually, the point of the discussion in the book manuscript is that the *Times* initially balked at running the story because the editors thought it wasn't newsworthy—a basic yawner from back in 1970, dredged up to embarrass our new envoy to Thieu's republic.

When Marchetti was enjoined from writing his book without censorship, one CIA official was quoted as giving thanks for the injunction because the revelations would have "blown us out of the water" in many places around the world. (The official was CIA director William Colby.) He could have meant this in the way the Fanfani story made future operations difficult in Italy, or he could have been focusing on a second kind of exposure in the book—Marchetti's plans to identify CIA "cover" organizations in and out of the United States. The Agency wants to avoid more troubles like the 1967 scandal that exposed the National Student Association as a CIA front. The Agency's proprietary fronts are detailed in a chapter that was mutilated in the first round of censorship. Rocky Mountain Air, of Arizona, was identified in a magazine article by Marchetti as a CIA domestic airline, but this does not appear in the book and has apparently landed under the knife.

Agency airlines and corporate covers evoke the stale air of vestervear, for, despite the CIA's

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new world, the revelation of the past has little impact beyond a brief period of media interest. But the CIA contends that all these little covert fronts make up a vital collective enterprise for clandestine use against our enemies. Agency officials have sworn that blowing more covers like NSA "would cause grave and irreparable damage to the national security," and therefore must be censored.

Done in by the Princeton men

MARCHETTI VIEWS THE CASE with just as much passion as the various lawyers and government officials, but in much earthier fashion. He sees himself as the target of a personal vendetta by the Old Boy network that has always run the agency. The upper reaches of the CIA are completely dominated by Ivy League WASPs, most of whom got started in the OSS during the war. William Colby, the current director, is fully in the tradition—an OSS operative who continued his work with the Agency, personally designing the Phoenix assassination program in Vietnam and virtually every other covert operation on his turf, Southeast Asia, rising to the top because he conducted every mission with the skillful good grace of a man who appreciates fine wine. A real Princeton man, say those who meet him.

Marchetti, on the other hand, went to Penn State and describes himself as "the cousin of bulldozer drivers." He joined the Agency in 1955 and worked his way up to the executive suites on the seventh floor of the CIA building. He was a special assistant to members of the top brass, sitting in on CIA policy meetings, a hawk on Vietnam, a general analyst of good reputation on strategic matters, a lover of things covert. As he describes it, he began to fall away from the CIA spirit when he saw first hand that the directors and assistant directors were much more interested in dreaming up clandestine operations, the cloak-and-dagger stuff, than they were in the production and analysis of intelligence. The Agency is still marked by a split between the analysts and the operatives, with thinly concealed contempt on both sides. Marchetti shared the analysts' view that the clandestine types, like E. Howard ("Eduardo") Hunt, had read too many spy novels and worn too many disguises—that they found the Agency a playground for their covert fantasies. (Any CIA operator, on the other hand, lets you know quickly that the analysts are pale-faced bookworms who "don't do anything" and might as well be in the State Department.) Marchetti half expected these traditional jealousies to be ironed out at the top, but he found that the operatives were in control, too busy hatching plots to care much about position papers. He began to "lose effectiveness," he says, when in

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which, in the CIA, is somewhat like casting doubt on the humanity of football in the heat of a pep rally.

WHATEVER THE FINAL OUTCOME in the courts, the lawyers in the Justice Department deserve some credit within the profession for staging one of the most imaginative legal comebacks in recent history. Charged by the Nixon Administration with the task of protecting the government against conspirators and tattlers, the Department assembled a truly dismal record. Scores of left-wing conspirators were brought to trial without a single conviction, and the prosecutors became successful only when the charge toward security turned inward. John Dean and Jeb Magruder have been convicted of conspiracy; John Mitchell is squirming under a mound of conspiracy evidence. Prosecutors who failed miserably against hippies and malcontents have been so lethal against their colleagues in the surrounding offices that eminences like Richard Kleindienst, Will Wilson, and Robert Mardian have fled, hoping to get out of range.

In the midst of all this came the loss in the Pentagon Papers case. The Justices ruled that it is possible for the government to obtain a restraining order against a newspaper—that the First Amendment is not an absolute guarantee of the right to publish national-security information—but that the government has to meet a heavy burden of proof, showing that the information is overwhelmingly likely to harm U.S. military preparedness by threatening the loss of lives or jeopardizing vital military secrets. The Department lawyers warned of horrible calamities if the *Times* were allowed to publish more top-secret cables by the Old Boys, but the Court surveyed the ramparts of freedom after the first batch of papers had appeared in the *Times* and detected little damage. The government stumbled miserably, and the precedent looked useful to Marchetti.

Then the Department failed to convict Ellsberg of espionage, or anything else, and the cause of secrecy seemed hopeless. When the CIA lawyers brought the Marchetti problem over to the Justice Department, two flimsy weapons seemed available to shut him up. They could seek an injunction before a judge on the same grounds they had tried against the *New York Times*, but the courts had proved to be attached to the First Amendment. The second unpromising avenue was the old reliable: criminal deterrence. They could threaten to prosecute Marchetti for espionage if he persisted. They knew from their Espionage preparations, however, that conviction would be difficult. Marchetti might want to take his case before a jury, whose mem-

to perceive a grave threat to the national security. Besides, a threat is not as permanent as an injunction; and if it ever lost credibility, Marchetti would be free to publish and the government would be left with only a long shot at a post facto remedy in a criminal trial. The secrets would already be out.

Whoever hit upon the contract approach, based on Marchetti's secrecy agreement, brought about a Newtonian advance in the prospects for quiet, discreet government. It was a fivefold stroke of genius.

(1) It fuzzed up First Amendment objections to prior restraint. The government sued to enjoin Marchetti from breaching his contractual obligation not to reveal classified information. Federal officials submit to other limitations on their First Amendment rights as a condition of employment, such as the Hatch Act prohibition against political activity, and this is merely another limitation—sanctified in writing.

(2) The government did not have to show that the material would do substantial damage to the national defense, because the terms of the contract refer only to classified material. Not many things clearly injure military preparedness, but everything can be classified.

(3) With these two new advantages, the government could seek prior restraint before a judge instead of conviction before a jury. The Justice Department does not like juries. Also, the hearing would take place *in camera*, a secret proceeding to discuss classified secrets, with no reporters to ask fresh questions.

(4) The contract question made the issue more complicated, confusing the press hounds and toning down publicity. The focus shifted from big sexy matters of secrecy and national defense to the question of whether Marchetti would honor his own written word.

(5) The contract injunction, if sustained, has enormous value for application in other agencies of the government where secrecy agreements are required. Already, the addition of Marks to the case puts the State Department and its mandatory oath under the secrecy blanket. Conceivably, the Justice Department could obtain an injunction against anyone, in or out of government, who has signed a secrecy oath and is suspected of leaking classified material. This would not be of much use against isolated, unanticipated leaks to the press, but it would be a potent weapon against known dissenters with a lot on their minds. Even a casual leak would be much more dangerous for those under injunction, for it would pose the risk of being jailed instantly for contempt of court.

ples' right to know" victories of the Pentagon Papers case, and they see the specter of a government whose employees have to get a note signed by an Old Boy before they can speak their mind. They know that the power to control classified information and punish national-security critics would be selectively enforced. Lyndon Johnson, Ted Sorensen, and Bill Bundy would still be able to make "appropriate usage" of state secrets in their memoirs without fear of injunction. (LBJ quoted extensively from the top-secret Pentagon Papers before they were released; but instead of being tried for espionage, like Ellsberg, he received an estimated \$1.5 million for *The Vantage Point*.) Every spring at budget time, the Pentagon would still leak startling new intelligence and tricolor graphs showing that the collective Russian nuclear missile is longer and more explosive than ours—and the generals will get bigger budgets, not an injunction. By carefully exploiting the new legal power of the secrecy contract, the government might be able to revive the absurd, discredited classification system—using the power of judges' robes to bring back the old days, when the function of a classified leak was to serve the government and when dissent was officially approved.

Staring into this libertarian's horror, the ACLU has pulled out all the stops in seeking to reverse the Marchetti defeat. The publisher, Knopf, has joined Marchetti and Marks to bring a little more First Amendment clout to the new suit. The plaintiffs will reargue their staunch First Amendment position—no prior restraint at all, under any circumstances. If they fail again there, which is likely, they will argue that the secrecy oaths are valid only if the secret material is properly classified—that is, if its release would plainly and seriously injure the military defense.

The government lawyers are confident that they won't have to get into the First Amendment morass, as they expect the district court to reaffirm its decision that the secrecy oath eliminates the civil liberties question: "In the opinion of the Court the contract takes the case out of the scope of the First Amendment; and, to the extent the First Amendment is involved, the contract constitutes a waiver of the defendant's rights thereunder." It's much simpler for the courts to look at things this way, the attorneys say, and if they can make this argument wash again, the Justice Department will leave behind a legacy of secrecy protection that President Nixon would be proud of. It would be a victory for zipper-lipped government snatched from the

quietly while the public is preoccupied with Nixon's sanity and his character flaws—something that

THESE OMINOUS RAMIFICATIONS of the Marchetti precedent have sent the ACLU lawyers

secrecy" guarantee, since classified material looks much dearer from the inside.

If the government wins again, the case will abound with new ironies. Marchetti and Marks will have unwittingly helped create the legal tools to make a vassal of every government employee who enters the sacred chambers of national security. In effect, Americans might then become divided into two basic types—those sufficiently gulled by the state's alleged need for privacy to sign its contract of *omerta*, and those who refuse. The robots of the first group would run the government, protected by the courts against the public. They would tend to become more cynical about the old principles of the Republic, while the second group would lose interest in the government itself. Mesmerized by clandestine fantasies, the courts would presumably consider the First Amendment inoperative in national-security matters such as the CIA's bugged house pets. The Agency would be left free, in the name of military defense, to expand its covert missions in the global fringes of the Third World—the only places where, especially to the bombed peasants of Southeast Asia, it is clearly no joke. The CIA is drawn to the Third World like a lonely derelict to a porn shop, where the salve for dreams is cheap and available. Instead of puncturing the myth of the CIA's awesome powers, Marchetti and Marks may ultimately find themselves and their secrecy oaths being used to reinforce the Agency's poisonous delusions. □

Subsided file

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel
7D43

EXTENSION

6121

NO.

DATE 17 December 1973

TO: (Officer designation, room number, and building)

DATE

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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DCI

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We are dickering with Senator Symington's office to set a date for your meeting with him. He has indicated that when you get together he would like to talk to you about the attached article by Taylor Branch. Since the item turns primarily around the Marchetti case I have asked John Warner to give you his comments on it. I have also asked DDO and DDI for any inputs they might have.

STATINTL

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SUBJECT: (Optional)

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7D43 HQ

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OFFICER'S
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COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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The Director expects to see Senator Symington shortly after the middle of the week and Symington wants his comments on the attached article at that time. I have asked John Warner for his commentary on it but would welcome any input you might wish to make.

STATINTL

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